

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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**CRWP-7293-2020 (O&M)
Date of Decision : 24.09.2020**

Pankaj and another

.....Petitioners

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Ranjeet K. Jaswal, Advocate
for the petitioners.

Mr. Naveen Singh Panwar, DAG, Haryana
for respondents No.1 to 3.

Mr. Amit Wadhwa, Advocate
for respondents No.4 and 5.

ARUN KUMAR TYAGI, J. (ORAL)

The case has been taken up for hearing through video conferencing.

CRM-W-929-2020

Prayer in the application filed under Section 482 of the Code of Criminal Procedure, 1973 is for placing on record marriage certificate of the petitioner as Annexure P-4.

For the reasons mentioned in the application, the same is allowed and marriage certificate of the petitioner is taken on record as Annexure P-4.

CRWP-7293-2020

The petitioners have filed the present petition under Articles 226/227 of the Constitution of India for issuance of writ in the nature of mandamus for directing respondents No.1 to 3 to protect their life and liberty from harm at the hands of respondents No.4 and 5.

Briefly stated the petition has been filed on the averments that the date of birth of petitioner No.1 is 01.01.2001 and the date of birth of petitioner No.2 is 11.09.2001 and both of them have attained majority. The petitioners want to solemnize marriage on attaining of

marriageable age by petitioner No.1. The petitioners are at present living together in live-in-relationship. The parents of petitioner No.2 did not agree to their relationship and threatened petitioner No.2 with dire consequences and forcibly tried to solemnize her marriage with some other person. The petitioners made representation dated 10.09.2020 to respondent No.2-the Superintendent of Police, Panipat but no action has been taken on the same.

During pendency of the petition, the petitioners have solemnized marriage on 17.09.2020 in accordance with Hindu rites and ceremonies and have placed copy of marriage certificate dated 17.09.2020 on record.

Vide order dated 17.09.2020, while issuing notice of motion, this Court directed respondent No.2-the Superintendent of Police, Panipat to look into the grievances of the petitioners as set out in the petition and also expressed in the representation dated 10.09.2020 and take appropriate action for protection of their life and liberty as may be warranted by the circumstances.

Status Report by way of affidavit of Sh. Satish Kumar, HPS, Deputy Superintendent of Police, Head Quarter, Panipat on behalf of respondents No.1, 2 and 4 has been filed in the Registry which is taken on record.

In the status report, it has been mentioned that respondents No.4 and 5 made statements that they had no objection to marriage of the petitioners and they will not cause any harm to their life and liberty.

Short reply on behalf of respondents No.4 and 5 has also been filed through e-mail print out of which is taken on record. In their reply respondents No.4 and 5 have submitted that actual date of birth of petitioner No.1 is 29.09.2003 and the petitioner is aged about 16 years and 8 months. The Aadhar Card of petitioner No.1 annexed with the petition is fabricated/forged document. The petitioner is not working in any factory as alleged in the petition. The marriage performed by petitioner No.1 with petitioner No.2 is not valid as petitioner No.1 is minor. Respondents No.4 and 5 have accordingly prayed for entrusting custody of petitioner No.2 to them.

In compliance with order dated 17.09.2020 the petitioners

are present before this Court through video conferencing. On being asked, the petitioners have stated that they have solemnized marriage as per Hindu rites and ceremonies out of their own free will and petitioner No.2 has also submitted that she is living with her husband-petitioner No.1 with her own free will and the petitioners have reiterated their prayer for protection of their life and liberty.

Learned Counsel for respondents No.4 and 5 has submitted that as per certificate issued by the Headmaster, Government Model High School, Noorwala, Panipat date of birth of petitioner No.1 is 29.09.2003. The petitioner No.1 has produced fabricated/forged Aadhar Card. The petitioner No.1 being less than 18 years of age could not solemnize marriage with petitioner No.2 and the petition is liable to be dismissed for suppression of material fact.

Learned Counsel for the petitioners has submitted that as per Aadhar Card (Annexure P-1) of petitioner No.1 his date of birth of is 01.01.2001 and petitioner No.1 is major though the petitioner No.1 has not attained the marriageable age of 21 years. Despite the marriage of the petitioners being in violation of Section 5(iii) of the Hindu Marriage Act, 1955 the same is voidable and not void. Even if, their marriage is held to be not proved or void, petitioners are living together out of their own free will in live-in-relationship in the nature of marriage and are entitled to protection of their life and liberty and necessary directions may be given to the concerned respondents for this purpose.

In ***Nandakumar and another Vs. State of Kerala and others : 2018(2) RCR (Civil) 899*** Thushara admittedly aged 19 years solemnized marriage with Nandakumar who was less than 21 years of age. Father of Thushara filed habeas corpus petition which was allowed by Kerala High Court on the grounds that Nandakumar not being of marriageable age, Thushara was not his legally wedded wife and apart from the photographs produced in the High Court, there was no evidence to solemnization of valid marriage between them and gave custody of Thushara to her father. On appeal Hon'ble Supreme Court set aside the order of the High Court and held that Thushara and Nandakumar being major had a right to live together even outside wedlock in live-in-

relationship.

In *Soni Gerry Vs. Gerry Douglas : 2018(1) RCR (Civil) 650*, where the daughter, who was major, expressed a desire to reside with her father in Kuwait, where she was pursuing her education. Hon'ble Supreme Court dismissed the habeas corpus petition filed by her mother on the ground that the daughter being major was entitled to exercise her choice. In that case Hon'ble Supreme Court observed as under:-

"10. It needs no special emphasis to state that attaining the age of majority in an individual's life has its own significance. She/He is entitled to make her/his choice. The courts cannot, as long as the choice remains, assume the role of *parens patriae*. The daughter is entitled to enjoy her freedom as the law permits and the court should not assume the role of a super guardian being moved by any kind of sentiment of the mother or the egotism of the father. We say so without any reservation."

In *CWP-31834-2019 Megha and another Vs. State of Haryana and others decided on 04.11.2019* and *CRWP-6700-2020 Komalpreet Kaur and another Vs. State of Punjab and others decided on 02.09.2020* protection petitions filed by petitioners living together in live-in-relationship were disposed of by Coordinate Benches of this Court with directions to take appropriate action for protection of their life and liberty.

In the present case as evidenced by Aadhar Card of petitioner No.1 and Senior Secondary Examination Certificate of petitioner No.2 attached with the petition both the petitioners are major. Respondents No.4 and 5 have disputed age of petitioner No.1 on the basis of certificate issued by Headmaster, Government Model High School, Noorwala, Panipat but prima facie genuineness of Aadhar Card issued in favour of petitioner No.1 cannot be doubted in the present proceedings although respondents No.4 and 5 may avail appropriate remedies for redressal of their grievance and adjudication of the dispute as to age of petitioner No.1. In any case the marriage of the petitioners being violative of Section 5(3) of the Hindu Marriage Act, 1955 will be voidable but not void. Even otherwise petitioners being major will be entitled to live together in live-in-relationship. In any case even if petitioner No.1 be assumed for arguments sake to be less than 18 years

of age, even then petitioner No.2 being major will be entitled to exercise her choice of living together with petitioner No.1 and the petitioners will be entitled to protection of their life and liberty against any harm from respondents No.4 and 5.

In view of the above discussion, the petition is allowed and respondent No.2-the Superintendent of Police, Panipat is directed to look into the grievances of the petitioners as set out in the petition and also expressed in the representation dated 10.09.2020 again and take appropriate action for protection of their life and liberty as may be warranted by the circumstances keeping in view opposition by respondents No.4 and 5 before this Court to marriage/living together of the petitioners.

A copy of this order along with copy of the petition and above-said representation be supplied to learned State Counsel and be also sent to respondent No.2-the Superintendent of Police, Panipat for requisite compliance.

(ARUN KUMAR TYAGI)
JUDGE

24.09.2020
Kothiyal

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No